

### **REMARKS**

Claims in the case are 1-9. Claim 1 has been amended herein. No claims have been added, and no claims have been cancelled herein.

Applicants wish to point out that the attorney docket number for the present case has been changed from "Mo-5487 / WW-5382" to --Mo-5487 / WW-5532--.

Claim 1 has been amended herein to include indentation and punctuation for purposes of improved clarity. In addition, Claim 1 has been amended to clearly recite two process steps, each beginning with a gerund (i.e., the moistening and pressing steps). Basis for the moistening and pressing steps of present Claim 1 is found in original Claim 1 and at page 3, lines 1-8 of the specification. Basis for the inclusion of the term "fibrous" in conjunction with the term "lacquer raw material" in Claim 1, is found in the specification at: page 1, line 15; page 1, line 26; page 1, line 30; page 2, line 5; page 2, line 7; page 2, line 8; and the Standard A 30 nitrocellulose of Example 1, page 5 (which Applicants submit is a fibrous nitrocellulose).

Claims 1, 5-7 and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 4,590,019 (**Lühmann et al**) in view of United States Patent No. 5,487,851 (**Dillehay et al**). This rejection is respectfully traversed in light of the amendments herein and the following remarks.

Lühmann et al disclose a process for the production of free-flowing, **non-fibrous** alcohol-moistened nitrocellulose for use in paints and lacquers (abstract, and column 2, lines 46-52). The process of Lühmann et al involves the necessary step of mixing nitrocellulose with a solvent for nitrocellulose and a lower aliphatic alcohol until the nitrocellulose fibers disappear. See the abstract, and column 1, line 64 through column 2, line 11 of Lühmann et al. As such, in the process of Lühmann et al, the original fibrous structure of the nitrocellulose feed stock is necessarily destroyed.

Dillehay et al disclose a process of producing gun propellants that involves preparing a combination of a binder material (e.g., nitrocellulose) and a particulate oxidizer (e.g., 1,3,5-trinitro-1,3,5-triaza-cyclohexane). See the abstract, and column 1, line 31 through column 2, line 10 of Dillehay et al. A critical and necessary step in the process of Dillehay et al involves mixing the binder material and particulate

oxidizer together with a solvent that is selected to **dissolve** the non-oxidizer ingredients (e.g., the binder material, such as nitrocellulose). See column 2, line 66 through column 3, line 8 of Dillehay et al. As such, the process of Dillehay et al necessarily involves destroying the original fibrous structure of the nitrocellulose that is used in the formation of the gun propellant.

Lühmann et al's process is directed towards the preparation of nitrocellulose materials for use in coatings. Lühmann et al provide no disclosure or suggestion as to the inclusion of particulate antioxidants, such as 1,3,5-trinitro-1,3,5-triaza-cyclohexane, in their process or the nitrocellulose materials prepared thereby. Dillehay et al's process is directed towards the preparation of gun propellants that include as necessary components a binder (e.g., nitrocellulose) and a particulate antioxidant (e.g., 1,3,5-trinitro-1,3,5-triaza-cyclohexane). Dillehay et al provide no disclosure or suggestion as to performing their process in the absence of particulate antioxidant. The nitrocellulose materials of Lühmann et al are not alone adequate for use as gun propellants, and the gun propellants of Dillehay et al are not suitable for use in coatings. As such, neither Lühmann et al nor Dillehay et al provide the requisite disclosure that would motivate a skilled artisan to combine or otherwise modify their respective disclosures.

As the Court of Appeals for the Federal Circuit has stated, there are three possible sources for motivation to combine references in a manner that would render claims obvious. These are: (1) the nature of the problem to be solved; (2) the teaching of the prior art; and (3) the knowledge of persons of ordinary skill in the art, *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). The nature of the problem to be solved and the knowledge of persons of ordinary skill in the art are not present here and have not been relied upon in the rejection. As for the teaching of the prior art, the above discussion has established that neither of the patents relied upon in the rejection provide the requisite teaching, and certainly do not provide the motivation or suggestion to combine that is required by Court decisions.

Even if Lühmann et al and Dillehay et al were combined, Applicants' presently claimed process would not result from such combination. The process of Applicants' present claims includes moistening a fibrous lacquer raw material based on nitrocellulose with water or alcohol, and then pressing the moistened fibrous lacquer

raw material based on nitrocellulose through the holes of a die. See amended Claim 1 herein. In Applicants' claimed process, the original fibrous structure of the nitrocellulose is not destroyed during either of the moistening or pressing steps. In the processes of Lühmann et al and Dillehay et al, the original fibrous structure of the nitrocellulose is necessarily destroyed. As such, Lühmann et al and Dillehay et al, either alone or in combination, do not disclose, teach or suggest the process of Applicants' claims.

The present rejection appears to make use of prohibited hindsight in picking, choosing and recombining various elements of the disclosures of Lühmann et al and Dillehay et al to arrive at Applicants' claimed process. One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988).

In light of the amendments herein and the following remarks, Applicants' present claims are deemed to be unobvious and patentable over Lühmann et al and Dillehay et al. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 2 and 8 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lühmann et al in view of Dillehay et al, and further in view of United States Patent No. 1,978,070 (**Foster**). This rejection is respectfully traversed with regard to the amendments herein and the following remarks.

Foster discloses a method of preparing nitrocellulose that involves, as a necessary step, colloidizing nitrocellulose with methanol at sub-zero temperatures. See page 1, lines 32-35 of Foster. Foster defines colloidizing as a process by which the structure of the nitrocellulose is removed, and the nitrocellulose is converted into an amorphous integral body. See page 1, lines 4-10 of Foster. The method of Foster thus necessarily involves destroying the original fibrous structure of the nitrocellulose used therein.

Lühmann et al and Dillehay et al have each been discussed previously herein. The processes disclosed by Lühmann et al and Dillehay et al each necessarily involve destroying the original fibrous structure of the nitrocellulose used therein.

Reasons for a lack of motivation with regard to combining Lühmann et al and Dillehay et al have been discussed previously herein. The process disclosed by Foster includes as a necessary step colloidizing nitrocellulose at sub-zero temperatures. Neither Lühmann et al nor Dillehay et al disclose or suggest colloidizing nitrocellulose at sub-zero temperatures. Lühmann et al, Dillehay et al and Foster do not provide the requisite disclosure that would lead a skilled artisan to combine or otherwise modify their respective disclosures.

Even if Lühmann et al, Dillehay et al and Foster were combined in the manner suggested by the Office Action, Applicants' claimed process would not result from such disclosure. In Applicants' claimed process, the original fibrous structure of the nitrocellulose is not destroyed during either of the moistening or pressing steps. In the processes of Lühmann et al, Dillehay et al and Foster, the original fibrous structure of the nitrocellulose is necessarily destroyed. As such, Lühmann et al, Dillehay et al and Foster, either alone or in combination, do not disclose, teach or suggest the process of Applicants' claims. The combination of Lühmann et al, Dillehay et al and Foster would not result in the process of Applicants' present claims, but for the impermissible use of hindsight reconstruction.

In light of the amendments herein and the preceding remarks, Applicants' claims are deemed to be unobvious and patentable over Lühmann et al in view of Dillehay et al, and further in view of Foster. Reconsideration and withdrawal of this rejection is respectfully requested.

Claims 3 and 4 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lühmann et al in view of Dillehay et al, and further in view of United States Patent No. 5,399,297 (**Panthal et al**). In light of the amendments herein and the following remarks, this rejection is respectfully traversed.

Panthal et al disclose a method of preparing solid detergents that comprise anionic surfactants and sodium salts and/or aluminosilicates. See the abstract and column 1, lines 50-54 of Panthal et al. More particularly, the method of Panthal et al involves solidifying a gel-form, plastic alkyl sulfate paste into a solid mixture by means of adding sodium salts and/or aluminosilicates to the alkyl sulfate paste. See column 2, lines 3-14 of Panthal et al. Panthal et al disclose mechanically converting the resulting solid mixture into a powder by means of breakers, mills, pelleting

machines or extruders (column 2, lines 6-17). Panthal et al provide no disclosure, teaching or suggestion with regard to the processing of nitrocellulose.

Reasons relative to a lack of motivation with regard to combining Lühmann et al and Dillehay et al have been discussed previously herein. Panthal et al disclose a method of preparing solid detergents that include anionic surfactants and sodium salts and/or aluminosilicates. Panthal et al provide no disclosure, teaching or suggestion as to the inclusion of nitrocellulose in the solid detergents prepared by their process, or with regard to the processing of nitrocellulose. Lühmann et al and Dillehay et al each disclose methods relating to the processing of nitrocellulose materials. Lühmann et al and Dillehay et al, either alone or in combination, do not provide any disclosure, teaching or suggestion with regard to methods of preparing solid detergents. As such, Lühmann et al, Dillehay et al and Panthal et al do not provide the requisite disclosure that would lead a skilled artisan to combine or otherwise modify their respective disclosures.

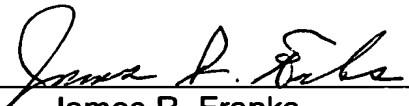
Even if Lühmann et al, Dillehay et al and Panthal et al were combined, Applicants' claimed process would not result from such combination. In the processes of Lühmann et al and Dillehay et al, the original fibrous structure of the nitrocellulose is necessarily destroyed. Foster provides no disclosure, teaching or suggestion with regard to processing nitrocellulose in such a way as to preserve the original fibrous structure of the nitrocellulose. In Applicants' claimed process, the original fibrous structure of the nitrocellulose is not destroyed during either of the moistening or pressing steps. As such, Lühmann et al, Dillehay et al and Panthal et al, either alone or in combination, do not disclose, teach or suggest the process of Applicants' claims. The combination of Lühmann et al, Dillehay et al and Panthal et al would not result in the process of Applicants' present claims, but for the impermissible use of hindsight reconstruction.

In light of the amendments herein and the preceding remarks, Applicants' claims are deemed to be unobvious and patentable over Lühmann et al in view of Dillehay et al, and further in view of Panthal et al. Reconsideration and withdrawal of the present rejection is respectfully requested.

The references made of record by the Examiner (in form PTO-892), but not relied upon in the Office Action of 9 February 2004, are deemed by Applicants to be no more material to the present case than those references already submitted to and considered by the Office in the present case.

In light of the amendments herein and the preceding remarks, Applicants' presently pending claims are deemed to define an invention that is unanticipated, unobvious and hence, patentable. Reconsideration of the rejections and allowance of all of the presently pending claims is respectfully requested.

Respectfully submitted,

By   
James R. Franks  
Agent for Applicants  
Reg. No. 42,552

Bayer MaterialScience LLC  
100 Bayer Road  
Pittsburgh, Pennsylvania 15205-9741  
(412) 777-3808  
FACSIMILE PHONE NUMBER:  
(412) 777-3902  
s:\shared\kgb\jrf293am